

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

Civil

DIVISION

(You must fill in this blank. See Instruction F)

RECEIVED

JUL 16 2019

Clerk, U.S. Courts
District of Montana
Missoula Division

Patricia J. Reckley
Pro Se

(Write the full name of each plaintiff who is filing this complaint. Each named plaintiff must sign the complaint.)

Plaintiff,

-against-

Village Health Care Center
EXEC DIRECTOR, DEE STRAUSS
ET AL.

(Write the full name(s) of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. The names listed in the above caption must be identical to those contained in Section II. Do not include addresses here and do not use et al.)

Defendants.

Case No. _____
(to be filled in by the Clerk's Office)

COMPLAINT
(Pro Se Non-Prisoner)

Jury Trial Demanded: ☐ Yes ☒ No
(check one)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to

INSTRUCTIONS

1. Use this form to file a civil complaint with the United States District Court for the District of Montana. Include only counts/causes of action and facts – not legal arguments or citations. You may attach additional pages where necessary. Your complaint must be typed or legibly handwritten in ink and on white paper. Write on only one side of the paper. Do not use highlighters and do not staple or otherwise bind your papers. All pleadings and other papers submitted for filing must be on 8 ½" x 11" paper (letter size). You must sign the complaint (see page 8). Your signature need not be notarized but it must be an original and not a copy. The Clerk's Office cannot provide you copies of documents in your file without prepayment of \$0.10 per page (for documents electronically available) or \$0.50 (for documents not electronically available). Please keep a copy of the documents you send to the Court.
2. The filing fee for a complaint is \$350.00 plus a \$50.00 administrative fee for a total of \$400.00. This amount is set by Congress and cannot be changed by the Court. If you pay the filing fee, you will be responsible for serving the complaint on each defendant and any costs associated with such service.
3. If you are unable to prepay the entire filing fee and service costs for this action, you may file a motion to proceed in forma pauperis.
4. Complaints submitted by persons proceeding in forma pauperis must be reviewed by the Court before defendants are required to answer. See 28 U.S.C. § 1915(e)(2). The Court will dismiss your complaint before it is served on defendants if: (1) your allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) your complaint does not state a claim upon which relief may be granted; or (4) you sue a defendant for money damages and that defendant is immune from liability for money damages. After the Court completes the review process, you will receive an Order explaining the findings and any further action you may or must take. The review process may take a few months; each case receives the judge's individual attention. Plaintiffs should not serve defendants, pursue discovery, or request entry of default judgment prior to the completion of this review process.
5. The case caption (page 1 of this form) must indicate the proper Division for filing. The proper Division is where the alleged wrong(s) occurred. When you have completed your complaint, mail the *original* of your complaint and either the full filing fee or your motion to proceed in forma pauperis to the proper Division:

Billings Division: Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden

Valley, McCone, Musselshell, Park, Petroleum, Powder River, Prairie, Richland, Rosebud, Stillwater, Sweetgrass, Treasure, Wheatland, Wibaux, and Yellowstone Counties

U.S. District Court Clerk, 601 2nd Avenue North, Suite 1200, Billings, MT 59101

Butte Division: *Beaverhead, Deer Lodge, Gallatin, Madison, and Silver Bow Counties*
U.S. District Court Clerk, 400 N. Main, Butte, MT 59701

Great Falls Division: *Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley Counties*
U.S. District Court Clerk, 125 Central Ave. West, Great Falls, MT 59404

Helena Division: *Broadwater, Jefferson, Lewis & Clark, Meagher, and Powell Counties*
U.S. District Court Clerk, 901 Front St., Ste 2100, Helena, MT 59626

Missoula Division: *Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties*
U.S. District Court Clerk, P.O. Box 8537, Missoula, MT 59807

I. Parties to this Complaint

A. Plaintiff

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Patricia J. Reckley

Street Address

2651 South Ave West (Room # 708)

City and County

Missoula

State and Zip Code

Montana 59804

Telephone Number

(406) 239-3631

E-mail Address

B. Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an

individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both.

Defendant No. 1:

Name DEE STRAUSS
 Job or Title EXECUTIVE DIRECTOR Village HCC (if known)
 Street Address 2651 South Ave West
 City and County Missoula MT
 State and Zip Code Montana 59804
 Telephone Number (406) 899-1495
 E-mail Address _____ (if known)
☐ Individual capacity ☒ Official capacity

Defendant No. 2:

Name Toshua Krushensky
 Job or Title Director of Nursing, Village HCC (if known)
 Street Address 2651 South Ave West
 City and County Missoula
 State and Zip Code Montana 59804
 Telephone Number (406) 728-9162
 E-mail Address _____ (if known)
☐ Individual capacity ☒ Official capacity

Defendant No. 3:

Name Annie Waylett
 Job or Title Social Service Director Village HCC (if known)
 Street Address 2651 South Ave West
 City and County Missoula
 State and Zip Code Montana 59804
 Telephone Number (406) 543-7241
 E-mail Address _____ (if known)
☐ Individual capacity ☒ Official capacity

Defendant No. 4:

Name Deanna Harris
 Job or Title Physical Therapist - Infinity Therapeutics (if known)
 Street Address 2651 South AVE West
 City and County Missoula
 State and Zip Code Montana 59804
 Telephone Number _____
 E-mail Address _____ (if known)

☐ Individual capacity ☒ Official capacity

(NOTE: If more space is needed to furnish the above information, continue on a blank sheet labeled "APPENDIX A: PARTIES").

II. Basis for Jurisdiction

Check the option that best describes the basis for jurisdiction in your case:

- ☒ **Federal Question:** Claims arising under the Constitution, laws, or treaties of the United States. This includes claims brought under 42 U.S.C. § 1983 against state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]."
- ☐ **U.S. Government Defendant:** United States or a federal official or agency is a defendant. This includes claims brought against federal employees under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)
- ☐ **Diversity of Citizenship:** A matter between individual or corporate citizens of different states and the amount in controversy exceeds \$75,000.

III. Venue

This court can hear cases arising out of the District of Montana. Under 28 U.S.C § 1391, this is the right court to file your lawsuit if: (1) All defendants live in this state AND at least one of the defendants lives in this district; OR (2) A substantial part of the events you are suing about happened in this district; OR (3) A substantial part of the property that you are suing about is located in this district; OR (4) You are suing the U.S. government or a federal agency or official in their official capacities and you live in this district.

Please explain why venue is appropriate in this Court: #1 and #2 above.

IV. Statement of Claim(s)

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph.

A. Count I:

1. What federal constitutional or statutory right(s) do you claim is/are being violated by defendants? *Americans with Disabilities Act (ADA) of 1990; Civil Rights of Institutionalized Persons Act (CIRIPA) SECT 504 of The Rehabilitation Act; Nursing Home Reform Act Violation Resident's Rights 42 CFR 483.10.*
2. What date and approximate time did the events giving rise to your claim(s) occur?

See Appendix B

3. Supporting Facts: (Include all facts you consider important, including names of persons involved, places, and dates. Describe what happened without citing legal arguments, cases, or statutes).

See Appendix B

4. Defendants Involved: (List the name of each defendant involved in this claim and specifically describe what each defendant did or did not do to allegedly cause your injury).

See Appendix B

(NOTE: For each additional claim, use a blank sheet labeled "APPENDIX B. STATEMENT OF CLAIMS." You must address paragraphs IV(A)(1-4) for each count., following the directions under IV.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive. (Do not cite legal arguments, cases, or statutes). Attach additional pages if needed.

mental anguish, Emotional distress, acute gastrointestinal
~~episode~~ episode (after missing bowel program)
depression - Contracted drug resistant form
of E-Coli at Village.

Received referral to urologist, meds for
indigestion.

(NOTE: If more space is needed to furnish the above information, continue on a blank sheet labeled "APPENDIX C: INJURY").

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

28 CFR 36.501 allows for a disabled
person to file a complaint w/out paying fees;
~~to~~ to have an attorney appointed, to receive
preventive relief and for damages. Plaintiff
requests all of the above that the court
may deem appropriate.

(NOTE: If more space is needed to furnish the above information, continue on a blank sheet labeled "APPENDIX D: REQUEST FOR RELIEF").

VII. Plaintiff's Declaration

A. Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

B. I understand I must keep the Court informed of my current mailing address and my failure to do so may result in dismissal of this Complaint without notice to me.

C. I understand the Federal Rules of Civil Procedure prohibit litigants filing civil complaints from using certain information in documents submitted to the Court.

In order to comply with these rules, I understand that:

- social security numbers, taxpayer identification numbers, and financial account numbers must include only the last four digits (e.g. xxx-xx-5271, xx-xxx5271, xxxxxxxx3567);
- birth dates must include the year of birth only (e.g. xx/xx/2001); and
- names of persons under the age of 18 must include initials only (e.g. L.K.).

If my documents (including exhibits) contain any of the above listed information, I understand it is my responsibility to black that information out before sending those documents to the Court.

I understand I am responsible for protecting the privacy of this information.

D. I understand the submission of a false statement or answer to any question in this complaint may subject me to penalties for perjury. I declare under penalty of perjury that I am the Plaintiff in this action, I have read this complaint, and the information I set forth herein is true and correct. 28 U.S.C. §1746; 18 U.S.C. §1621.

Executed at Court House on 7/16, 2019.
(Location) (Date)

Signature of Plaintiff: Patricia J. Reckley

Printed Name of Plaintiff: Patricia J. Reckley

APPENDIX B - Statement of Claims

(Page 1)

~~Count~~ Count I:

#2, #3, + #4 ~~Plaintiff~~: Plaintiff is paraplegic (paralyzed and wheelchair bound) and reliant on various assistive devices in order to perform ADL's (everyday living skills). Village Health Care Executive Director Dee Strauss committed numerous ~~resident~~ resident rights violations including not including (exclusively) resident ~~in~~ in changes to and implementation of care plan. Village Staff (at direction of Executive Director) made no less than 3 attempts to move Resident from room perfectly suited to her functional needs to rooms that would not accommodate her disability. This occurred on or about Oct/Nov 2018 - to a room with a bathroom so narrow there was ~~a~~ insufficient room to turn wheelchair around; On or about April 2019 - to a room that would not accommodate ~~the~~ bed poles due to drop ceiling and duct work interference; On or about May, 2019 to another room w/a drop ceiling and no roll-in shower. Resident was told by DON and Exec Director that she could use shower room next door to her bedroom. The shower room is used for storage and is not suitable for independent showering because the shower nozzle is on one side of a brick partition and the controls are on the other side of the partition. Plus, Resident gets dressed in bed (not in her chair) because she cannot stand. There would be modesty issues going from ~~bedroom~~ ^{bedroom} to shower room. PT Harris ~~said~~ ^{said} it is not accessible. Exec Director told Resident because "facility was built prior to 2010, they do not have to comply with ADA guidelines."

(cont. #2)

(Page 2)

On July 8, 2019 this pattern of neglect escalated to abuse when Dee Strauss in conjunction with Tashua (Don) directed the housekeeping staff to remove all of my personal items from the room I was in, including essential toileting devices (cath kits, gloves, saniwipes, slide board), and refused to allow Resident to toilet unless she moved to another room. Stacy from local Ombudsmans office came to assist Resident in faxing documents to court (Resident tried but Dee Strauss ~~she~~ would not allow Resident to use fax machine). Stacy asked if Resident would allow her to try to obtain cathing materials, ~~the~~ Resident agreed. Stacy came back a few minutes later stating Management would not provide cathing materials. Resident ~~at~~ also had a bowel program scheduled ~~for~~ on July 8th (same day). Toilet chair was in the bathroom so Resident could toilet if she had a slideboard (kept in therapy ^{dept}) and a spotter (CNA, ~~a~~ nurse, or PT). Usually Resident gets in bed to cath 3-4x per day and to transfer to toilet chair. Staff had removed mattress from bed so that was not possible on July 8th. Resident asked Nurse if she would go to therapy dept and borrow a slideboard and get a spotter to help with a chair to chair transfer. Nurse and PT Deanna Harris came back 15 minutes later to say they would not assist because she "did not feel comfortable getting in the middle of a dispute with management." Resident was never able to complete bowel program on July 8th.

(cont. #2)

(Page 3)

PT Harris also stated she "felt Resident was taking advantage of situation" so she did not want to help me obtain toileting materials.

Previously, PT Harris, as directed by Dee Strauss, excluded Resident from examining possible room choices and told PT Harris to choose the room she thought was most appropriate. PT Harris later admitted to Resident she chose the best of the worst.

Village Staff have committed violations of Resident Rights, The Nursing Home Reform Act, ADA, etc on multiple occasions. Resident believes this will not stop unless they are restrained by the Court. Resident made numerous attempts for assistance from various agencies including: (A) Ombudsman's office, Missoula Aging Services, Human Rights Bureau, Disability Rights Montana, Montana Legal Services, and the Surveyors Office, all to no avail.

The Ombudsman, Mary Dalton, requested a fair hearing w/ an ALJ. After months of preparation the case was dismissed for lack of Jurisdiction.

Resident appeals to this Court in accordance with 28 CFR 36.501-~~504~~ and asks for relief.

Also, Annie Waylett ~~is~~ discriminated against Resident by not providing accurate information in required "MDS" documentation, section Q was not properly filled out.